

**DRAFT LEGISLATION RECOMMENDATIONS  
FOR FOREST HEALTH STRATEGY WORK GROUP CONSIDERATION  
SUBJECT TO CHANGE WITHOUT NOTICE**

SECTION 1

Amend RCW 76.06.140 to read as follows:

The legislature finds as follows:

(1) ~~The legislature finds that~~ Washington faces serious forest health problems where forests are overcrowded or trees are infested with or susceptible to insects, diseases, wind, ice storms, and fire. The causes of and contributions to these susceptible conditions include fire suppression, past timber harvesting and silvicultural practices, and the amplified risks that occur when the urban interface penetrates forest land.

(2) There is a private and public interest in preventing and controlling uncharacteristic outbreaks of native and naturalized insects and diseases and reducing the risk of uncharacteristic loss due to ice storms, winds storms and wildfire. The public interest is in protecting forest productivity on forests managed for commodity production; forest ecosystem vitality; reducing the cost of fire suppression and the resulting public expenditures; protecting, restoring, and enhancing fish and wildlife habitat, including the habitat of threatened or endangered species, and protecting drinking water supplies and water quality.

(3) Well managed forests are the first line of defense in preventing destructive fires and outbreaks of native insects and diseases. Active management of forests, consistent with landowner objectives and the protection of public resources, is the most economical and effective way to address forest health concerns. Native insects and diseases play important ecological roles when their occurrence does not present a material threat to forest productivity and increase the likelihood of destructive fire.

(2) (4) ~~The legislature further finds that~~ Forest health problems may exist on forest land regardless of ownership and the state should ~~explore all possible avenues for working in~~ pursue collaboration with the federal government to address common health deficiencies.

(3) ~~The legislature further finds that healthy forests benefit not only the economic interests that rely on forest products but also provide environmental benefits, such as improved water quality and habitat for fish and wildlife.~~

SECTION 2

Add to RCW 76.06.020 (definitions)

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agent" means the recognized legal representative, representatives, agent, or agents for any owner.

(2) "Department" means the department of natural resources.

(3) "Owner" means and includes persons or their agents.

(4) "Timber land" means any land on which there is a sufficient number of trees, standing or down, to constitute, in the judgment of the department, a forest insect or forest disease breeding ground of a nature to constitute a menace, injurious and dangerous to permanent forest growth in the district under consideration.

(5) "Commissioner" means the commissioner of public lands.

(6) "Disturbance agent" means those agents that damage or kill significant numbers of forest trees, such as insects, diseases, other pests, wind storms, ice storms, and fires.

~~(6)~~ (7) "Exotic" means not native to forest lands in Washington state.

~~(7)~~ (8) "Forest land" means any land on which there are sufficient numbers and distribution of trees and associated species to, in the judgment of the department, contribute to the spread of forest insect or forest disease outbreaks that could be injurious to forest health.

~~(8)~~ (9) "Forest health" means the condition of a forest being sound in ecological function, sustainable, resilient, and resistant to insects, diseases, fire, and other disturbance, and having the capacity to meet landowner objectives.

~~(9)~~ (10) "Forest health emergency" means the introduction of, or an outbreak of, an exotic forest insect or disease that poses an imminent danger of damage to the environment by threatening the survivability of native tree species.

~~(10)~~ (11) "Forest insect or disease" means a living stage of an insect, other invertebrate animal, or disease-causing organism or agent that can directly or indirectly injure or cause disease or damage in trees, or parts of trees, or in processed or manufactured wood, or other products of trees.

~~(11)~~ (12) "Integrated pest management" means a strategy that uses various combinations of pest control methods, including biological, cultural, and chemical methods, in a compatible manner to achieve satisfactory control and ensure favorable economic and environmental consequences.

~~(12)~~ (13) "Native" means having populated Washington's forested lands prior to

European settlement.

~~(13)~~ (14) "Outbreak" means a rapidly expanding population of insects or diseases with potential to spread.

~~(14)~~ (15) "Person" means any individual, partnership, private, public, or municipal corporation, county, federal, state, or local governmental agency, tribes, or association of individuals of whatever nature.

Amend RCW 76.06.030 to read as follows:

- (1) This chapter shall be administered by the department.
- (2) The department shall have the lead role in developing a comprehensive forest health program to achieve the goals of this act. Within available funding, the department shall:
  - (a) develop, gather, and disseminate information on forest health conditions, monitor forest health conditions and changes over time, and coordinate and enter agreements with interested and affected parties;
  - (b) coordinate with universities, university extension services, federal and state agencies, private, public and tribal forest landowners, consulting foresters, and forest managers to monitor forest fuel build up, forest insect and disease outbreaks, and wind and ice storm events; and
  - (c) coordinate with universities, university extension services, and state and federal agencies to provide education and technical assistance to private, public, and tribal forest landowners on silvicultural and forest management science, techniques, and technology to maintain forests in conditions that are resistant to disturbance agents.
- (3) The department may implement a panel to advise on subjects and procedures for monitoring forest health conditions and program activities.
- (4) The department may coordinate, support, and assist in establishing cooperative forest health projects to control and contain outbreaks of insects or diseases. Priority for assistance authorized under this section shall be given to areas under forest health hazard warnings or orders and areas where forest health decline has resulted in increased risk to public safety from destructive wildfire.
- (5) The state and its officers and employees are not liable for damages to a person or their property to the extent that liability is asserted to arise from providing or failing to provide assistance under this Act.

Amend RCW 76.06.040 to read as follows:

~~Every owner of timber lands, or his agent, shall make every reasonable effort to control, destroy and eradicate such forest insect pests and forest tree diseases which threaten the existence of any stand of timber or provide for the same to be done on timber lands owned by him or under his control. In the event he fails, neglects, or is unable to accomplish such control, the action may be performed as provided for in this chapter.~~

Landowners are encouraged to maintain their forest lands in a healthy condition in order to meet their individual ownership objectives, protect public resources as defined in RCW 76.09, and avoid contributing to forest insect or disease outbreaks or increasing the risk of destructive fire.

Add new section to RCW 76.06:

NEW SECTION: A new section is added to chapter 76.06 RCW to read as follows:

(1) Forest health issues shall be addressed by a tiered system.

(a) The first tier is intended to protect forests from disturbance agents through the voluntary efforts of landowners. Consistent with landowner objectives and the protection of public resources, forests should be managed in ways that create, restore or maintain healthy forest ecosystems so that disturbance agents occur or exist at non-destructive levels. To the extent of available funding, information and technical assistance will be made available to forest landowners so they can plan for and implement necessary forest health maintenance and restoration activities.

(b) The second tier is intended to manage the development of threats to forest health, or contain or suppress existing threats to forest health, due to disturbance agents. Actions by landowners to address such threats to forest health are voluntary except as required under RCW 76.04 to reduce the danger of the spread of fire. Actions suggested to reduce threats to forest health are specified in forest health hazard warnings issued by the commissioner of public lands under section 4 of this act. Within available funding, site-specific information, technical assistance, and project coordination services shall be offered as determined appropriate by the department. Landowners who are provided notice of a warning under Section 4 subsection (5) of this act and fail to take action necessary to reduce the hazard created by disturbance agents may be subject to increased liability for the spread of fire as described in RCW 76.04.495 and .660.

(c) The third tier is intended to address significant threats to forest health due to disturbance agents that have spread to multiple forest ownerships or increased forest fuel that is likely to further the spread of fire. Actions required to reduce significant threats to forest health are specified in forest health hazard orders issued by the commissioner of public lands under section 4 of this act. Within available funding, site-specific information, technical assistance, and project coordination services shall be offered as determined appropriate by the department. Landowners who are provided notice of a forest health hazard order under Section 4 subsection (5) of this act and fail to take the action required under such order may be subject to increased liability for the spread of fire as described in RCW 76.04.495 and .660.

NEW SECTION: Sec. 3: A new section is added to Chapter 76.06 to read as follows:

(1) The commissioner of public lands may appoint a forest health technical advisory committee when the commissioner determines that forest lands in any area of the state appear to be threatened by a forest health condition of such a nature or extent that action to reduce the threat may be necessary.

(a) The committee shall consist of two scientists chosen for expertise relative to the attendant risk, one specialist in wildfire protection, one specialist in fuels management, one forester with extensive silvicultural experience in the affected forest type, and a chair who shall represent the commissioner, but shall not be a voting member of the committee. The departments of wildlife, ecology, and natural resources shall provide technical assistance to the committee in the areas of fish and wildlife, water quality, and forest practices, but shall not be members of the committee, nor shall they vote. The director of Forest Health Protection of Region 6 of the USDA Forest Service or their named designee shall be invited to be an ex-officio member of the committee. In the event the area affected contains substantial acreage of tribal or federally owned lands, representatives of the affected agencies and tribes shall be invited to participate in the proceedings of the committee.

(b) The commissioner may disband the committee when he or she deems appropriate.

(2) The committee shall evaluate the threat to forest health and make a timely report to the commissioner on its nature, extent, and location.

(a) In its deliberations, the committee shall consider the need for action to reduce the threat and alternative methods of achieving the desired results, including the environmental risks associated with the alternatives.

(b) The committee shall also recommend potential approaches to achieve the desired results for forest land ownerships of fewer than 10 acres and for forests owned for scientific, study, recreational, or other uses not compatible with active management.

(c) The committee shall recommend to the commissioner whether a forest health hazard warning or order is warranted.

(d) When the commissioner issues a forest health hazard warning or order, the committee shall monitor the progress and results of activities to control or mitigate the hazard and shall periodically report its findings to the commissioner.

(3) The exercise by forest health technical advisory committee members of their authority under this section shall not imply or create any liability on their part. Advisory committee members shall be compensated as provided for in RCW 43.03.250 and shall receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. Costs associated with the committee may be paid from the general fund appropriation made available to the department of natural resources for fire suppression.

NEW SECTION. Sec. 4: A new section is added to chapter 76.06 RCW to read as follows:

(1) Prior to issuing a forest health hazard warning or forest health hazard order, the commissioner shall consider the findings and recommendations of the forest health technical advisory committee and shall consult with county government officials, forest landowners and forest land managers, consulting foresters, and other interested parties to gather information on the threat, opportunities or constraints on control mechanisms, and other information they may provide. The commissioner, or a designee, shall conduct a public hearing in a county within the geographical area being considered.

(2) The commissioner of public lands may issue a forest health hazard warning when he or she deems such action is necessary to manage the development of a threat to forest health or contain or suppress an existing threat to forest health. A decision to issue a forest health hazard warning may be based on existing forest stand conditions and:

(a) the presence of insects, disease or other pests that are likely to (i) spread to multiple forest ownerships and, if not controlled or contained, cause extensive damage to forests; or (ii) increase forest fuel that is likely to further the spread of fire;

(b) when, due to physical damage from wind or ice storm or other cause, there is likelihood of (i) insect populations building up to damaging levels; or (ii) increasing forest fuel that is likely to further the spread of fire; or

(c) when otherwise determined by the commissioner to be appropriate.

(3) The commissioner of public lands may issue a forest health hazard order when he or she deems such action is necessary to address a significant threat to forest health. A decision to issue a forest health hazard order may be based on existing forest stand conditions and:

(a) the presence of insects, disease or other pests that have (i) spread to multiple forest ownerships and have caused and are likely to continue to cause extensive damage to forests; or (ii) increased forest fuel that is likely to further the spread of fire;

(b) when, due to extensive physical damage from wind or ice storm or other cause, there is likelihood of (i) insect populations causing extensive damage to forests; or (ii) increasing forest fuel that is likely to further the spread of fire;

(c) insufficient landowner action under a forest health hazard warning; or

(d) when otherwise determined by the commissioner to be appropriate.

(4) A forest health hazard warning and forest health hazard order shall be issued by use of a commissioner's order. General notice of the commissioner's order shall be published in a newspaper of general circulation in each county within the area covered by the order and on the department's website. The order shall specify the boundaries of the area affected, including federal and tribal lands, the forest stand conditions that would make a parcel subject to the provisions of the order, and the actions landowners or land managers should or must take to reduce the hazard.

(5) Written notice of a forest health hazard warning or forest health hazard order shall be provided to forest landowners of specifically affected property.

(a) The notice shall set forth:

- (i) The reasons for the action;
- (ii) The boundaries of the area affected, including federal and tribal lands;
- (iii) Suggested actions that should be taken by the forest landowner under a warning and the actions that must be taken by a forest landowner under an order;
- (iv) The time within which such actions should be taken under a warning and must be taken under an order, provided, however, that the effective date of an order shall comply with subsection (8) of this section;
- (v) How to obtain information or technical assistance on forest health conditions and treatment options; and
- (vi) The right to request mitigation under subsection (6) and appeal under subsection (7) of this section.

(b) The notice shall be served by personal service or by mail to the latest recorded real property owner, as shown by the records of the county recording officer as defined in RCW 65.08.060. Service by mail is effective on the date of mailing. Proof of service shall be by affidavit or declaration under penalty of perjury.

(6) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may apply to the department for the remission or mitigation of such order. Such application shall be made to the department within fifteen days after notice of the order has been served. Upon receipt of the application, the department may remit or mitigate the order upon whatever terms the department in its discretion deems proper, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in such reasonable manner and under such rule as it deems proper.

(7) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may appeal the order to the forest practices appeals board.

(a) Such appeal shall be filed within thirty days after notice of the order has been served, unless application for mitigation has been made to the department. When such an application for mitigation is made, such appeal shall be filed within thirty days after notice of the disposition of the application for mitigation has been served.

(b) The appeal must set forth:

- (i) The name and mailing address of the appellant;
- (ii) The name and mailing address of the appellant's attorney, if any;
- (iii) A duplicate copy of the forest health hazard order;
- (iv) A separate and concise statement of each error alleged to have been committed;
- (v) A concise statement of facts upon which the appellant relies to sustain the statement of error; and
- (vi) A statement of the relief requested.

(8) A forest health hazard order issued under subsection (5) is effective thirty days after date of service unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, the order is effective thirty days after notice setting forth the disposition of such application is served unless an appeal is filed from such disposition. Whenever an appeal of the order is filed, the order shall become effective only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the order in whole or in part.

(9) Upon written request, the department may certify as adequate a forest health management plan developed by a forest landowner, before or in response to a forest health hazard warning or forest health hazard order, if the plan is likely to achieve the desired result and the terms of the plan are being diligently followed by the forest landowner. Such certification of adequacy shall be determined by the department in its sole discretion and shall be provided to the requestor in writing.

Amend RCW 76.09.220 to include:

(9) The forest practices appeals board shall have exclusive jurisdiction to hear appeals of forest health hazard orders issued by the commissioner under section 4 subsection (5) of this act. Such proceedings are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings.

NEW SECTION. Sec 5: A new section is added to chapter 76.06 RCW to read as follows:

Nothing in this act shall exempt actions specified under the authority of this act from the application of the provisions of RCW 76.09 and rules promulgated thereunder which govern forest practices.

## SECTION 6

RCW 76.09.060 (1) is amended to read as follows:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions



the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, as amended, shall be exempt from the landowner signature requirement on any forest practice application required to be filed.

**The remainder of RCW 76.09.060(1) remains unchanged)**

NEW SECTION. Sec. 7. A new section is added to 76.09 RCW to read as follows:

The forest practices board shall evaluate the eastside riparian rules to determine if adjustments are needed to meet the riparian function intended by the rules and contribute toward forest health and wildfire protection goals set forth in Section 1 of this act. The forest practices board shall consider creating a class of emergency forest practices that will enable forest landowners to prevent the spread of disturbance agents, as defined in section 8 of this act, when rapid spread resulting in extensive loss is likely. Such emergency forest practices are intended to enable forest landowners to meet their ownership objectives and protect public resources.

**SECTION 8**

RCW 76.04.005 is amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Additional fire hazard" means a condition existing on any land in the state;  
 (a) covered wholly or in part by forest debris which is likely to further the spread of fire and thereby endanger life or property; or  
 (b) when, due to the effects of disturbance agents, broken, down, dead or dying trees exist on forest land in sufficient quantity to be likely to further the spread of fire within areas covered by a forest health hazard warning or order issued by the commissioner of public lands under Section 4 subsection (5) of this act.

The term "additional fire hazard" does not include green trees or snags left standing in upland or riparian areas under the provisions of RCW [76.04.465](#) or chapter 76.09 RCW.

(2) "Closed season" means the period between April 15 and October 15, unless the department designates different dates because of prevailing fire weather conditions.

(3) "Department" means the department of natural resources, or its authorized representatives, as defined in chapter 43.30 RCW.

(4) "Department protected lands" means all lands subject to the forest protection assessment under RCW [76.04.610](#) or covered under contract or agreement pursuant to RCW [76.04.135](#) by the department.

(5) "Disturbance agent" means those agents that damage or kill significant numbers of forest trees, such as insects, diseases, other pests, wind storms, ice storms, and fires.

~~(5)~~ (6) "Emergency fire costs" means those costs incurred or approved by the department for emergency forest fire suppression, including the employment of personnel, rental of equipment, and purchase of supplies over and above costs regularly budgeted and provided for non-emergency fire expenses for the biennium in which the costs occur.

~~(6)~~ (7) "Forest debris" includes forest slash, chips, and any other vegetative residue resulting from activities on forest land.

~~(7)~~ (8) "Forest fire service" includes all wardens, rangers, and other persons employed especially for preventing or fighting forest fires.

~~(8)~~ (9) "Forest land" means any unimproved lands which have enough trees, standing or down, or flammable material, to constitute in the judgment of the department, a fire menace to life or property. Sagebrush and grass areas east of the summit of the Cascade mountains may be considered forest lands when such areas are adjacent to or intermingled with areas supporting tree growth. Forest land, for protection purposes, does not include structures.

~~(9)~~ (10) "Forest landowner," "owner of forest land," "landowner," or "owner" means the owner or the person in possession of any public or private forest land.

~~(10)~~ (11) "Forest material" means forest slash, chips, timber, standing or down, or other vegetation.

~~(11)~~ (12) "Landowner operation" means every activity, and supporting activities, of a forest landowner and the landowner's agents, employees, or independent contractors or permittees in the management and use of forest land subject to the forest protection assessment under RCW [76.04.610](#) for the primary benefit of the owner. The term includes, but is not limited to, the growing and harvesting of forest products, the development of transportation systems, the utilization of minerals or other natural resources, and the clearing of land. The term does not include recreational and/or residential activities not associated with these enumerated activities.

~~(12)~~ (13) "Participating landowner" means an owner of forest land whose land is subject to the forest protection assessment under RCW [76.04.610](#).

~~(13)~~ (14) "Slash" means organic forest debris such as tree tops, limbs, brush, and other

dead flammable material remaining on forest land as a result of a landowner operation.

~~(14)~~ (15) "Slash burning" means the planned and controlled burning of forest debris on forest lands by broadcast burning, underburning, pile burning, or other means, for the purposes of silviculture, hazard abatement, or reduction and prevention or elimination of a fire hazard.

~~(15)~~ (16) "Suppression" means all activities involved in the containment and control of forest fires, including the patrolling thereof until such fires are extinguished or considered by the department to pose no further threat to life or property.

~~(16)~~ (17) "Unimproved lands" means those lands that will support grass, brush and tree growth, or other flammable material when such lands are not cleared or cultivated and, in the opinion of the department, are a fire menace to life and property.

## SECTION 9

RCW 76.04.660 is amended to read as follows:

(1) The owner of land on which there is an additional fire hazard and the person responsible for the existence of an additional fire hazard, when the hazard is the result of a landowner operation or the land is within an area covered by a forest health hazard warning issued under Section 4 subsection (5) of this act, shall take reasonable measures to reduce the danger of fire spreading from the area and may abate the hazard by burning or other satisfactory means.

(2) An extreme fire hazard shall exist within areas covered by a forest health hazard warning or order issued by the commissioner of public lands under Section 4 subsection (5) of this act in which there is an additional fire hazard caused by disturbance agents and the landowner has failed to abate, isolate, or reduce the fire hazard, or has failed to take such action as required by the forest health hazard order. The duties and liability of such landowner under this chapter are as described in subsections (5), (6) and (7).

~~(2)~~ (3) The department shall adopt rules defining areas of extreme fire hazard that the owner and person responsible shall abate. The areas shall include but are not limited to high risk areas such as where life or buildings may be endangered, areas adjacent to public highways, and areas of frequent public use.

~~(3)~~ (4) The department may adopt rules, after consultation with the forest fire advisory board, defining other conditions of extreme fire hazard with a high potential for fire spreading to lands in other ownerships. The department may prescribe additional measures that shall be taken by the owner and person responsible to isolate or reduce the extreme fire hazard.

~~(4)~~ (5) The owner or person responsible for the existence of the extreme fire hazard is required to abate, isolate, or reduce the hazard. The duty to abate, isolate, or reduce, and liability under this chapter, arise upon creation of the extreme fire hazard. Liability shall include but not be limited to all fire suppression expenses incurred by the department, regardless of fire cause.

~~(5)~~ (6) If the owner or person responsible for the existence of the extreme fire hazard or forest debris subject to RCW [76.04.650](#) refuses, neglects, or unsuccessfully attempts to abate, isolate, or reduce the same, the department may summarily abate, isolate, or reduce the hazard as required by this chapter and recover twice the actual cost thereof from the owner or person responsible. Landowner contingency forest fire suppression account moneys may be used by the department, when available, for this purpose. Moneys recovered by the department pursuant to this section shall be returned to the landowner contingency forest fire suppression account.

~~(6)~~ (7) Such costs shall include all salaries and expenses of people and equipment incurred therein, including those of the department. All such costs shall also be a lien upon the land enforceable in the same manner with the same effect as a mechanic's lien.

~~(7)~~ (8) The summary action may be taken only after ten days' notice in writing has been given to the owner or reputed owner of the land on which the extreme fire hazard or forest debris subject to RCW [76.04.650](#) exists. The notice shall include a suggested method of abatement and estimated cost thereof. The notice shall be by personal service or by registered or certified mail addressed to the owner or reputed owner at the owner's last known place of residence.

(9) A landowner or manager may make a written request to the department to inspect their property and provide a written notice that they have adequately abated, isolated, or reduced an additional or extreme fire hazard. An additional or extreme fire hazard shall be considered to continue to exist unless and until the department, in its sole discretion, issues such notice.

NEW SECTION. Sec. 10. The following sections are each repealed:

(1) RCW 76.06.050 (Infestation control district – Creation – Notice to Owners) and 1988 c 128 § 17; 1961 c 72 § 1; 1951 c 233 § 5

(2) RCW 76.06.060 (Department to control pests and diseases if owner fails) and 1988 c 128 § 18; 1951 c 233 § 6

(3) RCW 76.06.070 (Lien for costs of control – Collection) and 1988 c 128 § 19; 1951 c 233 § 7

(4) RCW 76.06.080 (Owner complying with notice is exempt) and 1988 c 128 § 20; 1951 c 233 §11

(5) RCW 76.06.090 (Dissolution of infestation control district) and 1988 c 128 §21; 1951 c 233 § 12

(6) RCW 76.06.110 (Deposit of moneys in general fund – Allotment as unanticipated receipts) and 1979 ex. s c 67 § 12; 1951 c 233 § 9